

IN THE MATTER OF	*	BEFORE THE
MITCHELL-WIEDEFELD FUNERAL HOME, INC.	*	STATE BOARD OF
Respondent	*	MORTICIANS AND
License Number: E00173	*	FUNERAL DIRECTORS

CONSENT ORDER

On February 21, 2014, the State Board of Morticians and Funeral Directors (the "Board") charged Mitchell-Wiedefeld Funeral Home, Inc., License Number E00173 (the "Respondent Funeral Home"), with violation of certain provisions of the Maryland Morticians and Funeral Directors Act (the "Act"), Md. Health Occ. Code Ann. § 7-101 *et seq.* (2009 Repl. Vol. and 2013 Supp.).

Specifically, the Board charged Respondent Funeral Home with violation of the following provisions of § 7-316(b) of the Act:

Subject to the hearing provisions of § 7-319 of this subtitle, the Board may deny a license to an applicant for a funeral establishment license, reprimand the holder of a funeral establishment licensee, place any holder of a funeral establishment license on probation, or suspend or revoke a funeral establishment license if, with the knowledge or at the direction of the funeral establishment:

- (1) An unlicensed individual practices mortuary science or funeral direction for or within the funeral establishment;
.....
- (3) An employee of the funeral establishment fails to comply with § 7-405 of this title.

H.O. § 7-101(u) (iii) (1) Practice mortuary science means:

- (iii) For compensation, to arrange for or make final disposition of a dead human body.

H.O. § 7-405 Pre-need contracts

.....

(b) (1) Only a licensed mortician, a licensed funeral director, or a holder of a surviving spouse license may offer or agree, directly or indirectly, to provide services or merchandise under a pre-need contract.

Code Md. Regs. tit. 10, § 29.06:

.03 Execution of Pre-need Contract.

A. Only a licensed mortician, licensed funeral director, or holder of a surviving spouse license shall execute a pre-need contract with a buyer.

.10 Prohibitions.

A. The following individuals may not enter into a pre-need contract with a buyer:

(4) An individual who is not licensed by the Board as a mortician, funeral director, or surviving spouse license holder.

On April 9, 2014, a Case Resolution Conference was convened in this matter. Based on negotiations occurring as a result of this Case Resolution Conference, the Board and Respondent Funeral Home agreed to enter into this Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board makes the following findings of fact:

I. Background

1. At all times relevant to the charges, Respondent Funeral Home was and is licensed as a funeral establishment in the State of Maryland. Respondent Funeral Home was originally licensed in Maryland on or about April 10, 1931, being

issued corporate license number C00038. On May 1, 1971, the Respondent Funeral Home was issued license establishment number E00173. Respondent Funeral Home last renewed its establishment license on or about November 2012, which license will be valid until November 30, 2014.

2. At all times relevant to the charges, Respondent Funeral Home was, and is, co-owned by Individual A¹ an unlicensed individual, and Individual B who is licensed to practice mortuary science in Maryland. Individual A is the Treasurer and Individual B is the President and supervising mortician of the Funeral Home, which employs five licensed morticians, including Individual B.

II. Complaint and Investigation

3. On or about September 20, 2013, an unnamed individual left a package in the lobby of the building where the Board maintains an office. The package, which was delivered to the Board, contained approximately thirty-three (33) at-need and pre-need agreements between the Respondent Funeral Home and various clients, which had been signed or initialed by Individual A, co-owner of the Funeral Home and an unlicensed individual.

4. On November 26, 2013, Board staff conducted an annual inspection and audit of the Respondent Funeral Home. Board staff served Individual B with a subpoena for "The entire original files pertaining to At-Need and/or Pre-Need funeral contracts/arrangements made by your business establishment..." for thirty-three (33) named individuals, hereinafter Clients A through GG. The names of the individuals were selected from the documents which had been provided to the Board by the anonymous complainant.

¹ Respondent Funeral Home is aware of the identity of Individual A and Individual B.

5. On November 26, 2013, Individual B submitted to Board staff the thirty-three (33) subpoenaed original files. Individual B retained copies of the files.

6. A review of all of these documents revealed that Individual A, on behalf of Individual B and the Funeral Home, engaged in pre-need and at-need discussions with individuals and accepted and signed a number of pre-need and at-need agreements, as follows:

Client²	Date	Written &/or Accepted by	Type	Documents
A & B ³	01/21/80	Indiv A	Pre-Need	Two unsigned cremation arrangement sheets & note to file initialed by Indiv A
C	10/25/90	Indiv A	Pre-Need	Funeral Purchase Agreement of 10.25.90 signed by Indiv A
D	09/21/94	Indiv A	Pre-Need	Pre-Need Funeral Purchase Agreements of 8.15.94 and 9.21.94, signed by Indiv A as "Director", Pre-Arrangement Escrow Agreement of 9.21.94, signed by a licensee
E,F ⁴	10/25/95	Indiv A	Pre-Need	Pre-Need discussion notes and arrangement sheet of 10.25.95 written by Indiv A but not signed
G	12/06/95	Indiv A	Pre-Need	Pre-Need arrangement sheet of 12.6.95 initialed by Indiv A
H	02/01/96	Indiv A	At-Need	At-Need arrangement sheet initialed by Indiv A
I	02/21/96	Indiv A	Pre-Need	Pre-Need Funeral Purchase Agreement of 2.21.96, signed by Indiv A. Prepaid Funeral Contract Statement of Funeral Goods and Services signed by Indiv A 9.3.10
J	11/11/74	Indiv A	At-Need	Arrangement sheet of 11.11.74 w/ costs, initialed by Indiv A
K & L	11/04/96	Indiv A	Pre-Need	Handwritten notes of 11.04.96 by Indiv A for Pre-Need arrangements from meeting w husband
M & N	05/10/00	Indiv A	Pre-Need	Undated handwritten notes by Indiv A of discussion w both spouses about pre-need arrangements and at-need arrangement sheet of 5.10.00 regarding the wife initialed by Indiv A

² The names of the clients are confidential. Respondent may obtain a Confidential Client Identification List from the Administrative Prosecutor.

³ Two clients are listed on the same line when they are husband and wife.

⁴ Client E is single. There is no "Client F."

M & N	05/10/00	Indiv A	Pre-Need-	Undated handwritten notes by Indiv A of discussion w both spouses about pre-need arrangements and at-need arrangement sheet of 5.10.00 regarding the wife initialed by Indiv A
O	09/25/00	Indiv A	Pre-Need	Pre-Need Funeral Purchase Agreement "estimates" completed by Indiv A, unsigned and mailed by Indiv A to client on 9.25.00
P	05/12/95	Indiv A	At Need	At-Need arrangement sheet w/ costs, initialed by Indiv A on 5.12.95
Q	09/25/03	Indiv A	Pre-Need	Pre-Need Statement of Funeral Goods and Services signed by Indiv A on 9.25.03 and pre-need Funeral Purchase Agreement of 9.6.02 and arrangement sheet written and initialed by Indiv A
R & S	03/16/06	Indiv A	Pre-Need	Notes of pre-need discussion initialed on 3/16/06 by Indiv A who met with both spouses
T	04/13/07	Indiv A	At Need	Funeral Purchase Agreement of 4.13.07 signed by Indiv A and arrangement sheet initialed by Indiv A
U	04/27/07	Indiv A	At Need	At-Need Funeral Purchase Agreement of 4.27.07 initialed by Indiv A and arrangement sheet initialed by Indiv A
V	09/22/07	Indiv A	At Need	At-Need arrangement sheet w/ costs, initialed by Indiv A
W	10/15/07	Indiv A	At Need	Funeral Purchase Agreement of 10.15.07 signed by Indiv A and arrangement sheet initialed by Indiv A
X	12/21/09	Indiv A	At Need	Funeral Purchase Agreement of 12.21.09 signed by Indiv A and arrangement sheet initialed by Indiv A
Y	08/21/10	Indiv A	At Need	At-Need Funeral Purchase Agreement signed by Indiv A and arrangement sheet completed by Indiv A
Z	02/10/11	Indiv A	At Need	At-Need Funeral Purchase Agreement of 2.10.11 signed by Indiv A and arrangement sheet initialed by Indiv A
AA	11/19/11	Indiv A	At Need	At-Need Funeral Purchase Agreement and arrangement sheet of 11.19.11 initialed by Indiv A, not signed by family
BB	12/01/11	Indiv A	At Need	At-Need Funeral Purchase Agreement of 12.1.11 signed by Indiv A and arrangement sheet initialed by Indiv A
CC	09/19/12	Indiv A	At Need	At-Need Funeral Purchase Agreement of 9.19.12 signed by Indiv A and arrangement sheet initialed by Indiv A
DD	11/05/12	Indiv A	At Need	At-Need statement of costs of funeral good and services and arrangement sheet prepared by Indiv A on 11.25.12 but not signed or initialed. Did not meet w family.
EE	12/13/12	Indiv A	Pre-Need	Notes of meeting and discussion of 12.13.12 of pre-need arrangements, written and initialed by Indiv A
FF	12/20/12	Indiv A	At Need	Funeral Purchase Agreement of 12.20.12 signed by Indiv A. Did not meet w family
GG	03/07/13	Indiv A	At Need	At-Need Funeral Purchase Agreement of 3.7.13 and arrangement sheet of w/ costs, initialed by Indiv A
HH	03/31/69	Indiv A	Pre-Need	Pre-Need arrangement sheet w/ costs, initialed by Indiv A, undated "Order of Cremation" witnessed by Indiv A

II	09/22/69	Indiv A	Pre-Need	Pre-Need arrangement sheet w/ costs, initialed by Indiv A
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7. On December 4, 2013, pursuant to a subpoena, Board staff interviewed Individual B. Individual B stated under oath:

- a. Individual B was aware that since approximately 1995, there were times that Individual A met with clients to make funeral arrangements;
- b. This conduct occurred approximately a few times a year;
- c. This conduct occurred if a close personal friend or family member of Individual A would call the Funeral Home and request to speak with Individual A;
- d. This conduct did not occur if another funeral director called the Funeral Home and requested someone to take care of a family who needed services;
- e. Individual A had discussions with families on the telephone and in-person at the Funeral Home;
- f. In the majority of cases, Individual A met with families by himself and without a licensed mortician being present;
- g. On a few occasions, either Individual B or another licensed mortician in the Funeral Home met with the families and Individual A;
- h. Individual B permitted Individual A to make funeral arrangements because he believed families were not being harmed and families specifically requested Individual A who they personally knew; and
- i. Individual B denied that Individual A ever conducted funerals, completed the contracts, or signed death certificates; and that these activities were all performed by licensed morticians.

8. On December 4, 2013, pursuant to a subpoena, Board staff interviewed Individual A. Individual A stated under oath:

- a. Individual A is not a licensed mortician;
- b. Individual A is "Chairman of the Board" and treasurer of the Funeral Home;

- c. Individual A began owning and operating the Funeral Home in July 1965 when he and a licensed funeral director purchased the property at the present location;
- d. Since July 1965, Individual A has been involved in making funeral arrangements solely with families of friends and relatives;
- e. Individual A would become involved when he was called by a friend or relative and asked to help with the death in the family;
- f. In 2013, Individual A met with the mother of the deceased and made funeral arrangements with the family of his wife's best friend from college;
- g. In 2012, Individual A made funeral arrangements with two families. In one of the cases, he met with the son, an attorney he had been working with, regarding the funeral of the son's mother. Individual A signed the purchase agreement. In the other case, he made pre-need arrangements with a fellow alumnus of his high school;
- h. In 2011, Individual A made funeral arrangements with five families, which included the funeral arrangements for his mother-in-law;
- i. In 2010, Individual A made pre-need arrangements with a member of his church, including discussion of a whole life insurance annuity. He signed the purchase agreement. Individual B signed the whole life insurance annuity agreement;
- j. In 2009, Individual A prepared and signed a funeral purchase agreement for an individual who is a member of his church;
- k. In 2007, Individual A met with the personal representative of an individual and signed the statement of funeral goods and services. In another case in 2007, Individual A met with the son of the deceased and initialed the statement of goods and services;
- l. In 2006, Individual A made pre-need arrangements;
- m. In 2003, Individual A made pre-need arrangements for a friend from the Rotary club; although he did not sign the funeral purchase agreement;
- n. In 2002, Individual A made funeral arrangements for his mother's brother;

- o. In 1996, Individual A made funeral arrangements for the friend of a trustee of the Board of Directors of a private school for which he was also a board member;
- p. In 1995, Individual A made funeral arrangements for an employee of the Funeral Home for whom he had previously made pre-need arrangements;
- q. In 1994, Individual A made pre-need funeral arrangements with an individual;
- r. In 1980, Individual A made pre-need arrangements with a husband and wife who were neighbors of his;
- s. On most of the agreements which Individual A signed, he crossed off the line which states "licensed mortician" because he does not hold himself out as a licensee;
- t. On some agreements Individual A used the initials of his full name;
- u. In one case, Individual A completed the cost of goods and services and an application for insurance annuity payment, which he signed, as "a representative of the funeral home." In addition, Respondent, who is a licensed insurance agent signed it; and
- v. In most instances, Individual A met with the individuals or families by himself. If the family member, relative, or neighbor knew Individual B, Individual B would sit in on the meeting.

III. Summary of Findings

9. Permitting Individual A, an unlicensed individual, to make funeral arrangements, both pre-need and at-need, which is the practice of mortuary science as defined in H.O. § 7-101(u), is evidence that Respondent Funeral Home had knowledge of an unlicensed individual practicing mortuary science or funeral direction for or within the funeral establishment, and; had knowledge that an employee of the funeral establishment failed to comply with Section 7-405 of the Act which states that only a licensed mortician, licensed funeral director, or a holder of a

surviving spouse license may offer or agree, directly or indirectly, to provide services or merchandise under a pre-need contract.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that with the knowledge of the Respondent Funeral Home, an unlicensed individual practiced mortuary science or funeral direction for or within the funeral establishment, in violation of § 7-316(b)(1); and that an employee of the funeral establishment failed to comply with § 7-405 of this title, in violation of § 7-316(b)(3) specifically by allowing an unlicensed individual to enter into and execute pre-need contracts.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 11 day of December, 2014, by an affirmative vote of a majority of the full authorized membership of the Board:

ORDERED that Respondent Funeral Home's license to operate a funeral establishment shall be **SUSPENDED**, effective December 18, 2014 for **thirty (30) days, with all but six (6) days stayed**, subject to the following terms:

1. For the entire period of active suspension, the Respondent Funeral Home shall not engage in the practice of mortuary science;
2. For the entire period of active suspension, the Respondent Funeral Home shall record an outgoing telephone message, approved in advance by the Board, which shall state that the Respondent Funeral Home is not accepting "death calls" from December 18, 2014 through December 23, 2014; that any at-need callers without pre-need contracts should contact any other funeral establishment licensed in the State of Maryland to practice mortuary science; that any callers

with pre-need arrangements only be advised to contact any other funeral establishment licensed in the State of Maryland to practice mortuary science; and that any callers holding funded pre-need contracts with the Respondent Funeral Home be advised to contact the personal, non-business telephone of a supervising mortician approved by the Board (the Supervising Mortician”);

3. For the entire period of active suspension, the Supervising Mortician shall advise callers holding revocable trust-funded pre-need contracts with the Respondent Funeral Home that they may request the full amount paid for their pre-need contract plus interest as a refund. Those callers shall be advised to contact any other funeral establishment licensed in the State of Maryland to practice mortuary science or, as a courtesy, the Supervising Mortician may provide the caller with a list of licensed funeral establishments within a 10- mile radius as provided by the Board. The Supervising Mortician shall provide the caller with the Board’s phone number as designated by the Board should the caller have questions or concerns;
4. For the entire period of active suspension, the Supervising Mortician shall advise callers holding irrevocable pre-need contracts, whether funded by trust or by insurance, that their funds or insurance policy assignments are portable and can be transferred to any other funeral establishment licensed in the State of Maryland to practice mortuary science. As a courtesy, the Supervising Mortician may provide the caller with a list of licensed funeral establishments within a 10-mile radius as provided by the Board. The Supervising Mortician shall provide the caller with the Board’s phone number as designated by the Board should the caller have any questions or concerns;
5. For the entire period of active suspension, the Respondent Funeral Home shall provide the Board with all callers whose pre-need contracts could not be serviced by the Respondent Funeral Home within twenty-four (24) hours of the call;
6. For the purposes of compliance with this Order, the Respondent Funeral Home assumes the responsibility for the conduct of the Supervising Mortician;
7. Any failure to comply with the aforementioned terms of suspension shall be considered a violation of this Order; and it is further

ORDERED that effective December 24, 2014, Respondent Funeral Home shall be placed on **PROBATION** under the following terms and conditions for a

minimum of one (1) year:

1. Within fifteen (15) days from the date of the Consent Order, the Respondent Funeral Home shall submit to the Board, the names of all individuals, excluding those that have already been provided to the Board, for whom pre-need contracts and/or arrangements have been made by the funeral establishment which were signed by an unlicensed individual;
2. Within thirty (30) days from the date of the Consent Order, the Respondent Funeral Home shall submit to the Board copies of revised pre-need contracts and/or arrangements for all individuals who were listed in the Board's charges and for all additional individuals for whom pre-need contracts were signed by an unlicensed person. The revised contracts shall be signed by a licensed mortician;
3. Within thirty (30) days from the date of the Consent Order, the Respondent Funeral Establishment shall submit to the Board a company policy which describes procedures to be followed for ensuring that only a licensed mortician executes contracts on behalf of the establishment;
4. The Respondent Funeral Establishment shall pay a monetary penalty of \$5,000.00 payable in full by June 30, 2015;
5. The Respondent Funeral Establishment shall make an anonymous contribution of \$5,000.00 to the Family Security Trust Fund payable in full by June 30, 2015; and
6. The Respondent Funeral Establishment shall comply with the Maryland Morticians and Funeral Directors Act and all laws, statutes and regulations pertaining to the practice of mortuary science; and it is further

ORDERED that any violation of the terms and conditions of this Consent Order shall be deemed unprofessional conduct in the practice of mortuary science; and it is further

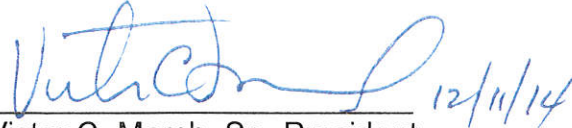
ORDERED that if Respondent Funeral Home violates any of the terms and conditions of this Consent Order, the Board, in its discretion, after notice and an opportunity for an evidentiary hearing before a quorum of the Board if there is a

genuine dispute as to the underlying material facts, or after an opportunity for a show cause hearing before the Board, may impose any sanction which the Board may have imposed in this case under §§ 7-316 & 7-317 of the Maryland Morticians and Funeral Directors Act, including a reprimand, probation, suspension, revocation and/or a monetary fine; and it is further

ORDERED that no earlier than one (1) year from December 24, 2014, and provided that Respondent Funeral Home has complied with the terms of the Consent Order during Respondent Funeral Home's period of one year and there are no new complaints, Respondent Funeral Home may petition the Board to terminate the conditions of this Consent Order; and it is further

ORDERED that Respondent Funeral Home is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order is a public document pursuant to Md. State Gov't Code Ann. § 10-611 *et seq.*


Victor C. March, Sr., President
State Board of Morticians and
Funeral Directors

CONSENT

I, John O. Mitchell, IV, co-owner of the Mitchell-Wiedefled Funeral Home acknowledge that I am represented by counsel and have reviewed this Consent Order with my attorney, Thomas J. Whiteford, Esquire, before signing this document.

I am aware that I am entitled to a formal evidentiary hearing before a quorum of the Board of Morticians and Funeral Directors. I acknowledge the validity and

enforceability of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other procedural and substantive protections to which I am entitled by law. I am waiving those procedural and substantive protections.

I voluntarily enter into and agree to abide by the foregoing Findings of Fact, Conclusions of Law, and Order and agree to abide by the terms and conditions set forth herein as a resolution of the Charges against me. I waive any right to contest the Findings of Fact and Conclusions of Law and I waive my right to a full evidentiary hearing as set forth above, and any right to appeal this Consent Order or any adverse ruling of the Board that might have followed any such hearing.

I acknowledge that by failing to abide by the conditions set forth in this Consent Order, I may be subject to disciplinary actions, which may include revocation of my license to practice mortuary science.

I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order, consisting of fourteen (14) pages.

12/11/14

Date

John O. Mitchell, IV

John O. Mitchell, IV
Co-owner, Mitchell-Wiedefeld Funeral Home
Respondent

12/11/14

Date

Thomas J. Whiteford

Thomas J. Whiteford, Esquire
Respondent's counsel

NOTARY

STATE OF MARYLAND

CITY/COUNTY OF

:

I HEREBY CERTIFY that on this ____ day of _____, 2014, before me, a Notary Public of the State and County aforesaid, personally appeared John O. Mitchell, IV, License No M01055, and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

Notary Public

My commission expires: .